Notice:
A victim in this case is one whose identity is protected by Civil Rights Law § 50-B

To be submitted

App. Div. Case No. 108457

Broome County Indictment No. 13-607

Supreme Court of the State of New York

Appellate Division : Third Department

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff-Respondent,

- against -

MICHAEL J. DEGNAN,

Defendant-Appellant.

RESPONDENT'S BRIEF
with Addendum

HON. JOSEPH A. McBRIDE
DISTRICT ATTORNEY,
CHENANGO COUNTY
Special District Attorney
For Respondent
Box 126, 2nd floor
Norwich, NY 13815
(607) 337-1745

KAREN FISHER McGEE
New York Prosecutors Training Institute, Inc.
Albany, NY 12210
Of Counsel

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES

PRELIMINARY STATEMENT

Defendant Michael J. Degnan appeals from a judgment of the Broome County Court (Burns, A.J., at trial and sentencing) entered on April 1, 2016, under Broome County Indictment No. 13-607. On that day, defendant was sentenced, as a persistent violent felony offender, to a prison term of 24 years to life upon his conviction, following a trial by jury, of Burglary in the Second Degree [Penal Law § 140.25(2)]. County Court imposed 1-year terms of incarceration upon each of the four class A misdemeanor convictions: Endangering the Welfare of a Child [Penal Law § 260.10(1)] and three counts of Petit Larceny [Penal Law § 155.25]. All the sentences were expressly ordered to run concurrently. A 2.[1] A timely Notice of Appeal was served and filed on or about April 1, 2016 (A 1).

According to the NYS Department of Correction and Community Services' online, inmate locator database, defendant is presently serving his sentence at New York State's Elmira Correctional Facility.

---

[1] Numbers preceded by A refer to pages of the appellant's Appendix which accompanies the Appellant's Brief; those preceded by RA refer to pages of the Respondent's Appendix that is being served and filed with this Respondent's Brief.

Record citations are used occasionally when supplying background information. In those instances, the Volume number of the Record on Appeal and the page number(s) are provided.

STATEMENT OF FACTS

Introduction

By Indictment No. 13-607 filed on September 20, 2013, the Broome County Grand Jury charged defendant with Rape in the First Degree [Penal Law § 130.35(1)]; Rape in the Second Degree [PL § 130.30(1)]; 2 counts each of Criminal Sexual Act in the First and Second Degrees [PL §§ 130.50(1) and 130.45(1)]; Endangering the Welfare of a Child [PL § 260.10(1)]; Burglary in the Second Degree [PL § 140.25(2)]; Criminal Trespass in the Second Degree [PL § 140.15]; 2 counts of Grand Larceny in the Fourth Degree [PL 155.30(8); and 3 counts of Petit Larceny (PL § 155.25). A 125-36. At arraignment on the indictment, defendant was ordered held without bail. Torrance L. Schmitz, Esq., was later assigned to represent defendant.[2] October 9, 2013 (Record Vol. XXIV) at 7; December 18, 2013 (Record Vol. XXIII) at 1-2.

Mr. Schmitz served as defendant's attorney until October 9, 2014, when County Court – following appropriate inquiry – granted defendant's application to proceed pro se and Mr. Schmitz was named his legal

[2] Mr. Schmitz is now an Assistant District Attorney in Broome County. By order dated August 1, 2018, the Broome County Court (Dooley, J.) named Hon. Joseph A. McBride, the District Attorney of Chenango County, to serve as Special District Attorney on this case. A copy of the *Order of Assignment of Special District Attorney* is annexed to this Brief as an Addendum.

advisor. Michael Sullivan, Esq., replaced Mr. Schmitz shortly thereafter. October 9, 2014 (Record Vol. XXII) at 1-7; and October 30, 2014 (Record Vol. XXI) at 1-3.

Hon. Martin E. Smith, the longtime Judge of the Broome County Court, retired at the end of 2015, before defendant was tried. Hon. Brian D. Burns, Judge of the Otsego County Court, consequently was assigned to preside over the trial of this indictment. Judge Burns first held a conference on January 13, 2016, where he reviewed pretrial matters with the parties (the trial prosecutor also was new to the case) and engaged defendant in a colloquy to ensure that defendant was still eager and competent to represent himself at the upcoming trial. January 13, 2016 (Record Vol. XII) at 1-9.

The Trial

Before jury selection began on February 1, 2016, the People moved to dismiss the top counts of the indictment that charged defendant with forcible sex offenses: first degree rape (first count) and first degree criminal sexual act (third and fourth counts). RA 1-2.

The People's proof concerning the Burglary and larceny charges [3]
June 9, 2013

Fourteen-year-old Julia W.[4] spent the night of June 8, 2013, at the home of Kayli S., a friend on the same cheerleading team as Julia. Julia's pre-dawn text message to a friend saying, "Kayli's dad raped me" triggered additional text messages and phone calls that resulted in Julia's parents racing to Kayli's house. Julia's dad confronted defendant, who walked away through the yard as Julia's mother was calling 911 on her cell phone. After Kayli and her mother were excused by authorities, Kayli's mother, Shantae S. (who was not married to defendant and he was not Kayli's father) took her children to their grandmother's house, where the family stayed for some weeks. A 52-59.

A New York State Police SORT (SWAT) team, who conducted a sweep of the premises before the search of the house for evidence began, ascertained that defendant was not inside the home or elsewhere on the property or in the woods adjoining the property. RA 13-16.

---

[3] The following summary of the evidence at trial is purposefully limited in scope. The jury did not convict defendant of any of the sexual offenses submitted for their consideration, and defendant on appeal is challenging just the Burglary in the Second Degree conviction, the only felony for which the jury found him guilty.

[4] Full names are not employed here when referring to the complainant in the alleged sex offenses, the complainant's then cheerleading friend, and the friend's mother. See Civil Rights Law § 50-b.

June 11, 2013

Upon the filing of a felony complaint, the local Town Court issued a warrant for defendant's arrest. RA 17, 21.

June 14, 2014

Robert Orzelek and his wife were getting ready for bed upstairs at their home at 247 Tunnel Road in Port Crane, New York, when they heard revving noises. Mr. Orzelek initially paid little heed, thinking it was a neighbor gunning the engine of his race car. But when the alarm system for their extended driveway (more than 650' long) was triggered, he went downstairs and outside to investigate. Neither of Mr. Orzelek's Ford F-150 pickup trucks was where he had parked them. The older one (1995 model) was now mired in some grassy mud alongside the driveway, where it passes through a wooded area; the truck keys were on the ground. The 2011 F-150, no longer in the garage, was nowhere to be seen. RA 4-9.

June 16, 2013

Stephen Terry was the local family member primarily responsible for taking care of his mother's home in Port Crane, New York, when she was in Naples, Florida. Now a "snowbird," his mother had been spending much of her time in Naples and had not been back to her house at 237 Tunnel Road – the house closest to that of the Orzeleks in this rural area –

in more than a year. A 60-62, 64-65, 70, 72, 82. When Mr. Terry went to the house on June 16, he noticed a broken padlock on the shed hanging on the hasp before he proceeded into the house by way of the outside cellar door. Mr. Terry stepped into the cellar and immediately saw his son's dirt bike, which had been left in an alcove around the corner. Other belongings were strewn on the floor. A 66-67.

Once upstairs, on the main level of the house, Mr. Terry saw dirty dishes in the sink and a mug, with a tea bag, on the table between the kitchen dining area and the living room; spiedies were marinating in the refrigerator. A 68, 70; RA 27a.

The Terry family typically left, *e.g.*, the kitchen lights burning to make it seem that people were home. But on this day, the lights were off and did not come on when Mr. Terry flipped the switch. It was then that he discovered that someone had unscrewed the light bulbs in the fixtures. A 67-68.

As he walked down the hallway to the bedrooms, Mr. Terry noticed that some attire of his was on the floor outside the hall closet where he had stored clothing. A sleeping bag was rolled out on top of the bed in his mother's bedroom; mouthwash and other toiletries (not his mother's) were on the dresser. A 69-70.

June 17, 2013

Mr. Terry – who did not know defendant and had not given him permission or authority to use the house (A 64) – contacted the Broome County Sheriff's Department in the morning of June 17, after reaching out to his brother and several family friends to see if they had been in the house (A 66, 71-72). Neither the Sheriff's Deputy who responded to his call nor Mr. Terry himself observed any signs of forced entry into the house (RA 12, 27). Fingerprints were lifted from the mug, which also was swabbed for DNA. One of the latent prints lifted from the mug later proved to match the inked imprint of defendant's right index finger, and the STR DNA profile developed from the swab of the coffee mug matched defendant's STR profile. A 87-88; RA 28-31.

At about noontime, Mr. Orzelek's 2011 F-150 truck was discovered on a side street in Binghamton and taken to the Broome County Sheriff's impound yard. Nothing of forensic evidentiary value was recovered from the truck. RA 10, 22.

June 20, 2013

U.S. Marshal Service personnel took defendant into custody at the Del Motel on the outskirts of Binghamton. A 89; RA 18. Mr. Terry saw the booking photo that accompanied local news reports of defendant's

apprehension and recognized the distinctive T-shirt defendant was wearing in the photo as being his own. That *Top Gun* T-shirt (which Mr. Terry had purchased at the Miramar Naval base, where the movie was filmed) was subsequently seized, pursuant to a warrant, from the property bag assigned to defendant at the Broome County Jail. A 75-77, 79, 90-91.

A long-sleeved, black work shirt belonging to Mr. Terry (embroidered with the name of his previous employer, *Stadium International*) was found in the Del Motel room where defendant had stayed. The officers who executed the search warrant of the motel room also recovered one of the *Ely Park* golf jackets that the Orzeleks received for winning a golf tournament, and which Mr. Orzeleck most recently had left in the 2011 F-150 truck stolen from his property. A 73-74, 77, 89; RA 11, 19-20.

August 2014
(the year after defendant was apprehended)

By this time, Mr. Terry's mother had decided to put her Tunnel Rd. home on the market, and Mr. Terry was readying the house for sale. As he was going through boxes in his mother's bedroom closet, he came upon an iPhone. Mr. Terry charged up the phone and turned it on: a woman's face appeared on the screen, but the phone was otherwise locked. Mr. Terry contacted the Sheriff's Department, which in turn reached out to Ms.

Smith, Kayli's mother and defendant's now ex-girlfriend. Because of the unique engraving on the iPhone's case and because she was indeed the woman in the photo on the display screen, Ms. Smith recognized the phone as one that defendant once owned. A 78-79; 92; RA 3, 25-26.

At the close of the People's case, defendant moved for a trial order of dismissal. In response to defendant's particularized motion for a trial order of dismissal of the second degree burglary count (RA 32-35), the trial prosecutor stated:

> Addressing the defendant's specific concerns, obviously as to the burglary – second degree, the People have put forth evidence at trial that he was not permitted there, that he remained there unlawfully. Whether he entered or remained unlawfully is sufficient. A person with authority and caretaking responsibilities over that residence, Mr. Terry, testified as to that.
>
> And, in addition, items of clothing, obviously, as can be shown by the defendant wearing Mr. Terry's clothing in his booking photo, were stolen from that particular residence.
>
> So, in the remaining, if he ultimately commits a crime therein, for example, a petit larceny, then there's a burglary. * * *
>
> -- RA 37.

County Court denied defendant's motion (RA 39).

The defense case

Defendant did not take the stand at trial. Rather, he adduced testimony from a digital forensics investigator (RA 41) and from a

professor at the Rochester Institute of Technology (RA 42) challenging the People's expert witnesses' analyses and conclusions concerning certain biological and cell phone evidence relating to the sex offense charges.

Summations, jury charge, deliberations, and verdict

County Court denied defendant's renewed motion for a trial order of dismissal (RA 43-44). Defendant in summation sought to persuade the jury that, inter alia, he should not be convicted of second degree burglary because the People had not proved he had the requisite, contemporaneous intent to commit a crime (RA 45-48). In his closing argument, the prosecutor urged the jury to ignore that argument, adding

> I don't have to show that when [Michael Degnan] entered he crossed that threshold and he came into that house, that at that very moment he intended to commit a crime and if I can't show that, there's no burglary. That's not true. It's enter *or* remain unlawfully. So, even if he entered the house, and then [after] remaining in the house, decided to take some items from that house, as he indicated [in summation] he did, it's a burglary. And in this case it's a burglary - second degree because it was a dwelling. He was staying there at night. We know that he had no permission or authority to enter or stay there.
>
> [So] I'm asking you to consider whether he formed that intent to steal once in that unlawful [sic] dwelling and remaining and then stole that clothing, the infamous tan T-shirt, [*i.e.*,] the "Miramar" shirt, the "Top-Gun" shirt, and the black "Stadium International" shirt.
>
> -- RA 49.

At the final charge conference, defendant – citing to *People v Gaines*, 74 NY2d 358 (1989) [5] – requested a jury instruction which would clarify for the jury the differing contemporaneous intent required for an "unlawful entry" burglary and an "unlawful remaining." This too was denied. RA 51-53. The subsequent charge to the jury on the second degree burglary count included the following:

> The next offense is burglary in the second degree. Under our law, a person is guilty of burglary in the second degree when that person knowingly enters or remains unlawfully in a building with the intent to commit a crime therein and when the building is a dwelling. A person enters or remains unlawfully in a building when that person has no license or privilege to enter or remain in the building. To have no license or privilege to enter or remain means to have no right to do so, no permission to do so and no authority to do so. A person knowingly enters or remains unlawfully in a building when they are aware that they are doing so without license or privilege to do so.
>
> * * *
>
> In order for you to find the defendant guilty of this crime, the People are required to prove from all the evidence in the case beyond a reasonable doubt that on or between June 9th and June 16, 2013, in Broome County, Michael Degnan unlawfully remained at a building located at 237 Tunnel Road, Town of Fenton, that he did so knowingly, that he did enter or remained

[5] Defendant had invoked *Gaines* in his pretrial, supplemental pro se motions for dismissal of the indictment on the ground that the burglary charged by the People was a "statutory impossibility." Record Volume I: 143-144 (pages from motion filed on March 21, 2014 – see Vol. I: 129-130), and 104-107, 119-122 (from motion filed on September 22, 2014 – see Vol. I: 83, 102).

The pretrial motions appear in reverse chronological order in Record Volume I.

> unlawfully, with an intent to commit a crime therein and that the building was a dwelling.
>
> -- RA 54-56.

The court offered the following explanation of the difference between second degree burglary and second degree criminal trespass:

> The difference between the two charges is that burglary requires … the person, either when they enter or while they're remaining unlawfully, that they have intent to commit a crime. Criminal trespass does not require any intent to commit a crime in the building, either upon entry or remaining unlawfully. All the other different elements are the same.
>
> -- RA 57.

The jury conscientiously discharged their responsibility over the course of their deliberations by asking for read-backs, clarification, and further instructions and by seeking to reach consensus after listening to the court's modified *Allen* charge. Finally, at just about 10 PM on February 11, 2016, County Court deemed it appropriate to accept a partial verdict (RA 58). The jury returned to the courtroom, and the foreperson announced the verdict on each of the submitted counts:

- Rape in the Second Degree [underage victim] – deadlocked
- Criminal Sexual Act in the Second Degree [anal, underage victim] – not guilty
- Criminal Sexual Act in the Second Degree [anal, underage victim] – not guilty
- Endangering the Welfare of A Child – guilty
- Burglary in the Second Degree – guilty

- Grand Larceny, Fourth Degree (Mr. Orzelek's 1995 truck) – deadlocked
- Grand Larceny, Fourth Degree (Mr. Orzelek's 2011 truck) – deadlocked
- Petit Larceny (Mr. Terry's *Top Gun* T-shirt) – guilty
- Petit Larceny (Mr. Terry's black, long-sleeved work shirt) – guilty
- Petit Larceny (Orzeleks' *Ely Park* golf jacket) – guilty

-- RA 59-61.

Sentencing

Defendant appeared for sentencing on April 1, 2016, after his CPL § 330.30(1) motion to set aside the sentence was denied. Adjudicated a persistent violent felony offender owing to two 1998 judgments of convictions for attempted murder in the second degree and second degree assault (A 3-4, 16), he was sentenced to 24 years' to life imprisonment upon the second degree burglary conviction. The 1-year terms of incarceration imposed upon the four misdemeanor convictions were ordered to run concurrently with each other and with the burglary sentence. A 2, 43-44, 46-47.

POINT I.

The People Acknowledge That The Burglary Conviction Should Be Reduced To Criminal Trespass. Defendant's Remaining Challenges, To Certain Aspects Of The Jury Instructions, Are Consequently Rendered Academic And Need Not Be Considered.

(Responding to Appellant's Points I, II, and III)

In Point III of his Appellant's Brief, defendant challenges the sufficiency of the People's proof of the second degree burglary charge brought under Penal Law § 140.25(2). Although not expressly noted in the Appellant's Brief, defendant preserved the claim that the proof at trial was legally insufficient, for the reason advanced on appeal, by his specific motion for a trial order of dismissal at the close of the People's case, which he incorporated by reference in his renewed motion following his case-in-chief (RA 32-35, 43-44). *See, People v Lane*, 7 NY3d 888; *People v Hines*, 97 NY2d 56, 61-62 (2001); *People v Battease*, 74 AD3d 1571, 1573 (3rd Dept 2010). In any event, an against the weight of the evidence analysis necessarily entails "an evaluation by this Court as to whether the elements of the crime charge were sufficiently proven at trial." *People v Dancy*, 87 AD3d 759, 760 (3rd Dept 2011); *see also People v Danielson*, 9 NY3d 342, 348 (2007) ("in conducting its weight of the evidence review, a court must consider the elements of the crime, for even if the prosecution's witnesses

were credible their testimony must prove the elements of the crime beyond a reasonable doubt").

The theory of prosecution at the trial of this indictment was that defendant did not have license to enter the house at 237 Tunnel Road and formulated the intent to commit a crime in the house while he was staying there. But in *People v Gaines,* 74 NY2d 358 (1989), the Court held

> A defendant who simply trespasses with no intent to commit a crime inside a building does not possess the more culpable state that justifies punishment as a burglar.
>
> * * *
>
> In order to be guilty of burglary for unlawful remaining, a defendant must have entered legally, but remain for the purpose of committing a crime after authorization to be on the premises terminates. And in order to be guilty of burglary for unlawful entry, a defendant must have had the intent to commit a crime at the time of entry. In either event, contemporaneous intent is required.
>
> -- 74 NY2d at 362-63.

The People have not been able to find any authority for the proposition that we may properly argue on appeal that a conviction should be affirmed on a theory of prosecution different from the one pursued in the trial court. Rather, the appellate courts that have dealt with similar scenarios have reviewed the sufficiency of the evidence in light of the theory of prosecution below. For example, the top count of the indictment filed against the HIV-positive defendant in *People v Plunkett,* 19 NY3d 400 (2014), charged him with Aggravated Assault Upon a Police or Peace

Officer because he bit the arresting officer. That indictment, however, was filed years after the Court held, in another biting case, that teeth are not "dangerous instruments" within the meaning of the Penal Law [*People v Owusu*, 93 NY2d 398 (1999)]. On the eve of trial, Plunkett pleaded to the indictment's top counts. Ordinarily, a plea of guilty forecloses a challenge on appeal to the sufficiency of the evidence, even when, as in *Plunkett,* the parties and the trial court agree that the plea is conditioned on the right to raise that issue [s*ee, e.g., People v Thomas*, 53 NY2d 338 (1981)]. Yet the Court of Appeals unanimously reversed Plunkett's Aggravated Assault plea conviction because "there is no set of facts ... that would establish guilt of aggravated assault upon the theory alleged." 19 NY3d at 407.

Similarly, the Second Department invalidated the bench trial conviction of burglary in *People v Davis*, 118 AD2d 795 (2d Dept 1986), because the trial judge specifically found that Davis "knowingly entered a dwelling at night and unlawfully remained therein[6] with the intention of committing an assault" – a finding "obviously at variance with the theory of the indictment to which the prosecution had limited itself" (that defendant intended to commit the crime of larceny). 118 AD2d at 795. *Compare People v Goldsmith*, 127 AD2d 293 (3rd Dept 1999), where this

[6] This "knowingly entered..and lawfully remained" is doubtlessly attributable to the fact that *Davis* predates the Court of Appeals decision in *Gaines, supra.*

Court found that the People had made "no such express limitation" and affirmed the burglary conviction.

The People therefore agree that the Court should modify the judgment, pursuant to CPL § 470.15(2), by reducing the burglary conviction to Criminal Trespass in the Second Degree {Penal Law § 140.15.(1)]. *Davis, supra; see also, People v Green,* 24 AD3d 16, 20 (3rd Dept 2005). Although Ms. Terry, a "snowbird" was in Naples, Florida in June 2013, the single-family residence on Tunnel Road was fully furnished, with working utilities, awaiting the "snowbird's" return as was her habit. That the house "could have been occupied at night" [*People v Quattlebaum,* 91 NY2d 744, 748 (1989)] was borne out by the evidence that defendant had made himself quite at home: he had comfortably slept in Ms. Terry's bed, kept toiletries in her house, and prepared meals in the kitchen, as evidenced by the dirty dishes in the sink, the coffee mug with tea bag on the table, the spiedies marinating in the refrigerator. In short, Ms. Terry's Tunnel Road home was indeed a "dwelling" within the ambit of Penal Law § 140.00(3). *See Quattlebaum, supra; People v Barney, 4*99 NY2d 367, 370-71 (1999); *People v Chandler,* 307 AD2d 585, 586 (3rd Dept 2003*); People v Sheirod,* 124 AD2d 14 (4th Dept 1987).

Remittitur for resentencing on the reduced Criminal Trespass charge is not necessary, however, because defendant has already served (a) the

maximum term authorized for that misdemeanor, and (b) the concurrent 1-year terms imposed upon the four misdemeanors for which the jury convicted him. *Davis, supra*.

Lastly, the Court need not consider the merits of defendant's remaining claims, which concern County Court's instructions to the jury with respect to the burglary count in its main charge to the jury (Appellant's Brief, Point I) and in its supplemental instruction given in response to a note from the deliberating jurors (Point II). Those claims have been rendered academic by the People's agreement that, as a matter of law, the Burglary conviction cannot stand.

CONCLUSION

For the foregoing reasons, the Court should modify the April 1, 2016 judgment of the Broome County Court by reducing the second degree burglary conviction to second degree criminal trespass and vacating the 24-year to life prison term imposed upon the burglary conviction; as so modified, the judgment should be affirmed.

Dated: September 17, 2018

Respectfully submitted,

HON. JOSEPH A. McBRIDE
DISTRICT ATTORNEY,
CHENANGO COUNTY
Special District Attorney
for Respondent
26 Conkey Ave.
Box 126, 2nd floor
Norwich, NY 13815
(607) 337-1745

By: Karen Fisher McGee

Karen Fisher McGee
Of Counsel
New York Prosecutors Training Institute
107 Columbia Street
Albany, NY 12210
(518) 432-1100

Rule 1250.8(j)

PRINTING SPECIFICATIONS STATEMENT

The foregoing Respondent's Brief was prepared on a computer using Microsoft® Word for Mac 2011 and a proportionally spaced typeface as follows:

Name of Typeface: Palantino
Point Size: 14
Line Spacing: Double

The total number of words in this Brief – including Point headings and footnotes, but exclusive of pages containing the Table of Contents, Table of Citations, and the Addendum that consists of a copy of the Broome County Court's August 1, 2018 Order of Assignment of Special District Attorney – is **3,836.**

ADDENDUM

Order of Assignment of Special District Attorney
Order of the Broome County Court (Dooley, J.) dated August 1, 2018

BROOME COUNTY COURT

County Court Chambers
P.O. Box 1766
Binghamton, New York 13902

Kevin P. Dooley
County Court Judge

Phone: (607) 240-5801
Fax: (607) 240-5355

August 1, 2018

Ms. Judith Osburn
Broome County Court Clerk's Office
Broome County Courthouse
Binghamton, New York 13901

Re: **People v. Michael J. Degnan**
Indictment No. 13-607; AD3D Case No. 108457

Dear Ms. Osburn:

Enclosed please find for filing an Order issued in connection with the above-captioned matters, which is being electronically transmitted to the Court Clerk's Office, the District Attorney's Office, and special prosecutor. Hard copies to your office and all the parties listed below will follow by regular mail.

Sincerely,

Joann Rose Parry

JOANN ROSE PARRY
Principal Law Clerk

cc: Hon. Stephen K. Cornwell, Jr.
Broome County District Attorney

Hon. Joseph A. McBride
Chenango County District Attorney

William T. Morrison, Esq.

Hon. Robert D. Mayberger
Appellate Division, Third Department

Broome County Court Clerk

Gregg A. Gates, Esq.
Sixth Judicial District Administrator

STATE OF NEW YORK
COUNTY COURT :: COUNTY OF BROOME

THE PEOPLE OF THE STATE OF NEW YORK

-v-

MICHAEL J. DEGNAN,
Defendant.

ORDER OF ASSIGNMENT OF SPECIAL DISTRICT ATTORNEY
COUNTY LAW SECTION 701
Indictment No. 13-607
AD3d Case No. 108457

KEVIN P. DOOLEY, J.

WHEREAS, on April 1, 2016, the above-named defendant was convicted in Broome County Court of Burglary in the Third Degree, Endangering the Welfare of a Child and three counts of Petit Larceny, and a Notice of Appeal was filed on his behalf, and

WHEREAS, the hiring of Torrance L. Schmitz by the Broome County District Attorney's Office necessitates the recusal of that Office from the prosecution of the appeal in this matter, because Mr. Schmitz represented the defendant on this matter while in private practice, and

WHEREAS, Chenango County District Attorney Joseph A. McBride has agreed to accept the appointment in this matter as special district attorney, it is hereby

ORDERED, that the Chenango County District Attorney shall be and hereby is assigned to act as special district attorney in this matter, to prosecute this matter in place of and instead of the Broome County District Attorney,and it is further

ORDERED, that the Broome County District Attorney shall forthwith arrange for delivery of all documents, records, evidence and materials relating to the above-captioned matters to the designated special district attorney.

Dated: August 1, 2018
Binghamton, New York

HON. KEVIN P. DOOLEY
Broome County Court Judge